

FILED
CLERK'S OFFICE

**PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY** PD 12:53

If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Instructions – Read Carefully

- 05-11315 REK**
Referred to MJ JL Celeronda
- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under the penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
 - (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
 - (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
 - (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your personal account exceeds \$ _____, you must pay the filing fee as required by the rules of the district court.
 - (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions to each court.
 - (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
 - (7) When the petition is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is _____
 - (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

AO 241 (Rev. 5/85)

H HAS CORPUS BY A PERSON IN STATE C TODAY

United States District Court		District Massachusetts
Name Freddie A. Parsons	Prisoner No. W-70538	Case No.
Place of Confinement Massachusetts Correctional Institute at Norfolk 2 Clark Street P.O. Box 43 Norfolk, MA. 02056-0043		
Name of Petitioner (include name under which convicted) Freddie A. Parsons	Name of Respondent (authorized person having custody of petitioner) v. Luis Spencer	
The Attorney General of the State of: Massachusetts		

PETITION

- Name and location of court which entered the judgment of conviction under attack Bristol County
Superior Court
- Date of judgment of conviction January 8, 2002
- Length of sentence 7 years to 7 years and 1 day, 20 years probation
- Nature of offense involved (all counts) Rape by Force, child under 16; Indecent
Assault and Battery on child under 14; Assault with intent to
Rape child under 16
- What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☒
 - (b) Judge only ☐
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court Massachusetts Appeals Court
- (b) Result Conviction Affirmed
- (c) Date of result and citation, if known May 28, 2004 Rule 1:28 decision
- (d) Grounds raised The judgements must be reversed due to prejudicial error committed by the prosecutor in examination and closing arguments.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court Massachusetts Supreme Judicial Court
- (2) Result Furtehr Appellate Review denied
- (3) Date of result and citation, if known July 21, 2004
- (4) Grounds raised same as above

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court N/A
- (2) Result N/A
- (3) Date of result and citation, if known N/A
- (4) Grounds raised N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court N/A
- (2) Nature of proceeding N/A
- (3) Grounds raised N/A

Question 9 (e)

A. The prosecutor improperly elicited evidence that the complainant's mother had suspected that the defendant was sexually abusing the complainant.

B. The prosecutor improperly argued in closing that the jurors should place themselves in the complainant's position in giving her testimony on the stand.

C. The prosecutor's errors were prejudicial and require reversal of the defendant's convictions.

II. The convictions of the two lesser included offenses must be vacated because the judge did not instruct the jury that convictions of those offenses may not be based on the same conduct as a conviction of the greater offense.

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐No ☒(5) Result N/A(6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A(2) Nature of proceeding N/A(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐No ☒(5) Result N/A(6) Date of result N/A

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc.

Yes ☐No ☒

(2) Second petition, etc.

Yes ☐No ☒(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:N/A

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: The judgments must be reversed due to "prejudicial errors committed by the prosecutor in examination and closing argument."

Supporting FACTS (state *briefly* without citing cases or law) The prosecutor improperly elicited evidence that the complainant's mother had suspected that the defendant was sexually abusing the complainant. He improperly argued in closing that the jurors should place themselves in the complainant's position in giving her testimony on the stand. His errors were prejudicial and require reversal of the defendant's convictions.

B. Ground two: The convictions of the two lesser included offenses must be vacated for failure of judge to properly instruct.

Supporting FACTS (state *briefly* without citing cases or law) The trial judge did not instruct the jury that convictions of those lesser included offenses may not be based on the same conduct as a conviction of the greater offense.

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

N/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐

No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Colleen A. Tynan

C.P.C.S. 47 North Second St. New Bedford, MA 02740

(b) At arraignment and plea same as (a)

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(c) At trial Colleen A. Tynan Committee for Public Counsel Services
47 North Second St. New Bedford, MA 02740

(d) At sentencing same as (c)

(e) On appeal Eric Brandt Committee for Public Counsel Services
44 Bromfield St. Boston, MA. 02108-4909

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

June 10, 2005
 (date)

Freddie A. Parsons
 Signature of Petitioner

(Rev. 12/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Freddie A. Parsons

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Norfolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

N/A

DEFENDANTS

Luis Spencer 13 P 253

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COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT N/A
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

Thomas Reilly, Attorney General
One Ashburton Place
Boston, MA. 02108

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 160 Other Contract <input type="checkbox"/> 165 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 575 Customer Challenge 12 USC 3410 <input type="checkbox"/> 591 Agricultural Acts <input type="checkbox"/> 592 Economic Stabilization Act <input type="checkbox"/> 593 Environmental Matters <input type="checkbox"/> 594 Energy Allocation Act <input type="checkbox"/> 595 Freedom of Information Act <input type="checkbox"/> 600 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 650 Constitutionality of State Statutes <input type="checkbox"/> 690 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 448 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input checked="" type="checkbox"/> 530 HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS - Third Party 28 USC 7609	

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. §2254

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO**VIII. RELATED CASE(S) IF ANY**

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
JUL 1 2005
CLERK OF COURT

JUL 1 2005 P 12:53

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY)

Freddie A. Parsons v. Luis Spencer

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

XX IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

05-11315 REK

V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES XX NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES XX NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES XX NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES XX NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

XX YES NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

XX EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME N/A

ADDRESS

TELEPHONE NO.